

(1) The Administrative Law Judge granted claimant's request for medical benefits in her Preliminary Hearing Order dated February 17, 1995, even though the claimant had not given the respondent notice of his work-related injury within ten (10) days as required by K.S.A. 44-520. However, the Administrative Law Judge also found notice was given within seventy-five (75) days from the claimant's date of accident and that just cause was established for the claimant's failure to notify the respondent within ten (10) days. See K.S.A. 44-520.

Claimant was the only person whose testimony was offered in this case. He testified by deposition on October 10, 1994, and at the preliminary hearing on February 2, 1995. The only medical evidence that was offered in the record is a group disability income form dated July 29, 1994, signed by Michael P. Estivo, D.O. The disability income request was for claimant's back surgery which was performed by Dr. Estivo to correct a herniated disc at L5-S1 on the left, not work related. Dr. Estivo performed said surgery on the claimant on July 26, 1994.

Claimant makes this claim for medical treatment for an injury to his left shoulder that occurred sometime between July 1, 1994 and July 15, 1994, while he was moving a file cabinet at work. Claimant acknowledged he did not notify his supervisor of the injury within the required ten (10) days. Claimant did notify the respondent of his alleged injury on August 18, 1994, after he had contacted an attorney. Claimant testified he told Dr. Estivo about his left shoulder problems. Claimant explained Dr. Estivo's working diagnosis as either left shoulder rotator cuff tear or an impingement syndrome. However, claimant had not received any medical treatment in reference to the left shoulder as the respondent had denied his claim.

The Administrative Law Judge found just cause for the claimant's failure to notify respondent within ten (10) days as required by K.S.A. 44-520. The Appeals Board affirms the Administrative Law Judge's decision. The Appeals Board finds that the claimant has established just cause through his testimony. Claimant testified that within three (3) days of his injury, the pain in his left shoulder subsided. He further testified that he did not again notice pain until he attempted to lift a half-gallon milk carton out of the refrigerator for his children. However, he also asserts he was too preoccupied at the time with his upcoming back surgery to be concerned with his left shoulder problem. Additionally, claimant establishes that during his recovery from the back surgery, his left shoulder was asymptomatic and only became symptomatic after the pain medication prescribed for the back surgery wore off.

(2) In regard to the issue of the Administrative Law Judge authorizing Dr. Michael Estivo as the treating physician, the Appeals Board finds that the Administrative Law Judge has jurisdiction pursuant to K.S.A. 44-534a to order medical benefits pending a full hearing of the claim. Accordingly, the Administrative Law Judge did not exceed his jurisdiction and since this is not a jurisdictional issue enumerated in K.S.A. 44-534a, the Appeals Board does not have the authority to review this issue.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated February 17, 1995, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Paul D. Hogan, Wichita, Kansas
Kurt W. Ratzlaff, Wichita, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
George Gomez, Director